Supreme Court, U.S.
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No. 94-1762

In The

Supreme Court of the United States

October Term, 1994

SALVATORE MORETTI,

Plaintiff-Petitioner,

v.

LOUIS J. DINICE and TIMOTHY J. SULLIVAN,

Defendant(s)-Respondent(s).

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT, DINICE

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QUESTIONS PRESENTED

1. Whether the Doctrine of Judicial Immunity bars a Complaint which alleges violations of petitioner's federal constitutional and civil rights under 42 *U.S.C.* Section 1983 by a municipal court judge, for decisions issued during judicial proceedings, and required the district court to dismiss such Complaint pursuant to *Fed. R. Civ. P.* 12(b)(6) for failure to state a claim upon which relief can be granted.

2. Whether the district court abused its discretion by awarding attorneys fees and costs as sanctions under *Fed. R. Civ. P.* 11 against petitioner, a law school graduate, who ignored clear legal precedent which holds that members of the judiciary are immune from suits which arise from decisions rendered during judicial proceedings.

LIST OF PARTIES

1. Petitioner, Salvatore Moretti, is an owner of real property located in the City of Hackensack, County of Bergen, State of New Jersey, and a graduate of New York Law School.

2. Respondent, the Honorable Louis J. Dinice, is an attorney-at-law of the State of New Jersey and was serving as municipal judge of the City of Hackensack, County of Bergen, State of New Jersey.

3. Respondent, the Honorable Timothy J. Sullivan, is an attorney-at-law of the State of New Jersey and is and was serving as a Judge of the Superior Court of New Jersey, County of Bergen.

There are no other parties to this action.

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TO THE HONORABLE SUPREME COURT:

The respondent, Louis J. Dinice, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by petitioner, Salvatore Moretti.

OPINIONS BELOW

The Third Circuit Court of Appeals affirmed the district court's dismissal of the Complaint against respondent, Louis J. Dinice. The Circuit Court's order has been reproduced in the Appendix to the Petition for Certiorari. (App. 2). The Third Circuit Court of Appeals did not rule on adequacy of sanctions. Petitioner's Notice to Appeal was filed on September 17, 1993 and indicated that petitioner was appealing from the district court's orders of August 4, 1993 (dismissing the Complaint against respondent, Sullivan), and September 13, 1993 (dismissing the Complaint against respondent, Dinice). Both Orders directed that sanctions should be imposed.

Orders of the district court dismissing the Complaint are reproduced in the Appendix to the Petition for Certiorari. (App. 3-15). The district court entered an Order denying petitioner's motion for reargument on September 30, 1993, and Orders imposing sanctions in the amount $1,613.65 and $2,780.50. Petitioner did not reproduce the district court's order denying his motion for reargument in the Appendix to the Petition for Certiorari. The district courts Orders of October 19, 1993 and October 28, 1993, imposing sanctions in favor of respondents, Dinice and Sullivan, respectively, are reproduced in the Appendix to the Petition for Certiorari. (App. 16-19).

None of the Orders below have been published.

Other Orders:

The district court entered an Order pursuant *Fed. R. Civ. P.* 69 requiring petitioner to provide documentation and to give testimony relating to his assets and things in action.

The district court entered a second Order pursuant to *Fed. R. Civ. P.* 69 enforcing litigant's rights when petitioner failed to obey the court's prior Order.

The Third Circuit Court of Appeals entered an Order which denied petitioner's motion to stay sanctions pending appeal.

None of these other Orders have been published nor have any been reproduced in the Appendix to the Petition for Certiorari.

STATEMENT OF JURISDICTION

The jurisdiction to review the Third Circuit Court of Appeals affirmation of the district court's decision to dismiss the Complaint against respondent, Dinice, pursuant to *Fed. R. Civ. P.* 12(b)(6) is invoked pursuant to 28 U.S.C. Section 1254(1).

The jurisdiction of the Third Circuit Court of Appeals was invoked pursuant to 28 U.S.C. Section 1291 as an appeal as of right from the Order of the district court dismissing the Complaint for failure to state a claim under *Fed. R. Civ. P.* 12(b)6.

The jurisdiction of the district court was invoked pursuant to 28 U.S.C. Section 1331 in that the Complaint raised federal questions under the Constitution of the United States (Fourth, Fifth and Fourteenth Amendments) and 42 U.S.C. Sections 1981, 1982 and 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. Sections 1981, 1982 and 1983.

COUNTER STATEMENT OF THE CASE

On or about February 3, 1993, petitioner, Salvatore Moretti, filed a Complaint in the United States District Court for the District of New Jersey, alleging violations of his federal constitutional and civil rights by state and municipal court judges (respondents herein) which petitioner alleges arise from decisions that each rendered during the course of judicial proceedings. The jurisdictional statement contained in the Complaint chronicles petitioner's experience and dissatisfaction with the State court system in New Jersey. (App. 20-49) Petitioner highlighted his discontent in the Brief that he submitted to the Court of Appeals wherein he blamed "[t]he failure of the state court system to remedy . . . matters resulted in the filing of three federal companion cases." (App. 73) The Petition for Certiorari refers to companion cases as *Moretti v. Zisa, et al.*, DC 92-4206 and *Moretti v. State of New Jersey*, DC 93-528. (Petition for Certiorari, Page 3). The Petition for Certiorari does not address the inter-

relation of any other case to the matter presented for review on this petition nor does petitioner justify his characterization of the other matters as "companion cases."

The allegations in the Complaint against Judge Dinice relate to municipal court matters in which petitioner appeared in his courtroom as litigant. The Complaint identified certain municipal prosecutions out of which the alleged civil rights violations arise, notably *State v. Salvatore Moretti*, Municipal Docket No. 92-2916, (App. 23-30). This was a municipal prosection against petitioner arising out of petitioner's failure to supply his residential rental units with water. (App. 25). Petitioner refers to other unrelated litigation which was brought or pending in other courts at the time which he claims have involved water shut off in his units. (App. 23). Petitioner highlighted the factual basis for his allegations against Judge Dinice, all which arise out of judicial proceedings in the Hackensack Municipal Court in the brief that he submitted to the Circuit Court of Appeals (App. 73-81).

The Petition for Certiorari does not identify the particular act(s) of respondent Dinice which petitioner attributes as violations of specific constitutional or civil rights. Petitioner, however, did argue before the Third Circuit Court of Appeals that his rights were violated when Judge Dinice failed to consider evidence relating to water consumption by his tenants in the municipal prosection referred to above. (App. 73-76). Petitioner also contended that Judge Dinice did not permit certain discovery in that matter and failed to take notice of the disposition of the litigation in other courts. (App. 76-77). Petitioner's own

pleadings demonstrate that, in his role as judge, respondent, Dinice, defined the issue in the municipal prosecution as whether petitioner provided water to his tenants, (App. 77), and determined that petitioner did not do so and, therefore, fined him $500.00 plus $25.00 court costs. (App. 79).

Other factual circumstances upon which petitioner bases his allegations of civil rights violations are found in the Complaint. Again, petitioner did not identify the particular protected interests which he claims have been violated by respondent, Dinice. In a municipal prosecution, for instance, petitioner charges that Judge Dinice failed to hold non-appearing subpoenaed witness in contempt (App. 24) and failed to consider certain evidence (App. 36 and 74-76). The Complaint also charges that petitioner's constitutional rights were violated when respondent refused to permit discovery in a quasi-criminal prosecution (App. 26-27, 31-36 and 76), and when Judge Dinice held petitioner in contempt for refusing to pay an imposed fine which resulted in petitioner's arrest. (App. 29 and 79).

REASONS FOR DENYING THE WRIT

POINT I

THIS COURT SHOULD NOT SECOND GUESS THE THIRD CIRCUIT COURT OF APPEALS WHICH BY AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT APPROVED THE TRIAL COURT'S APPLICATION OF FED. R. CIV. P. 12(b)(6) UNDER THE CIRCUMSTANCES.

Fed. R. Civ. P. 12(b)(6) affords a litigant relief when a Complaint filed against him fails to "state a claim upon

which relief can be granted." The trial court correctly recognized and applied the principles set forth in *Bartholomew v. Fischl*, 782 F.2d 1148, 1152 (3d Cir. 1986); *Angelasatro v. Prudential-Bache Securities, Inc.*, 764 F.2d 939, 944 (3d Cir.), *cert. denied*, 474 U.S. 925, 106 S. Ct. 267, 88 L. Ed. 2d 274 (1985), that such a motion may only be granted if accepting all well-pleaded allegations in the Complaint as true, and viewing them in the light most favorable to petitioner, petitioner is not entitled to relief. The district court determined that the tortuously lengthy Complaint filed by petitioner fails to raise any allegation that if true would give rise to a claim for relief.

The district court made specific findings that all alleged instances of wrong-doing arose out of judicial proceedings initiated in municipal court in Hackensack, New Jersey, over which respondent, Dinice, presided as a judicial officer and to which petitioner was a party. The district court held that the doctrine of judicial immunity barred petitioner's claims.

The Circuit Court of Appeals' review of the district court's Orders of dismissal pursuant to *Fed. R. Civ. P.* 12(b)(6) was plenary. *Moore v. Tartler*, 986 F.2d 682, 685 (3d Cir. 1993); *Young v. Quinlan*, 960 F.2d 351, 357 (3d Cir. 1992); *Ranson v. Marazzo*, 848 F.2d 398, 401 (3d Cir. 1988). The Petition for Certiorari does not demonstrate that how the lower courts misapplied the applicable law. The trial court was compelled to accept as true the factual allegations in the complaint and all reasonable inferences that could be drawn from them, and had to refrain from granting dismissal unless it was certain that no relief could be granted under any set of facts which petitioner could prove. See *Ranson v. Marazzo*, 848 F.2d 398, 401 (3d

Cir. 1988) (*citing D.P. Enterprises v. Bucks County Community College*, 725 F.2d 943, 944 (3d Cir. 1984)).

This Court should not deviate from the ordinary practice that the application by a Federal District Court of Rules of Civil Procedure, when affirmed by a Court of Appeals, will not be reviewed on Certiorari. *See Appalachian Power Co. v. American Institute of Certified Public Accountants*, 80 S. Ct 16, 4 L. Ed. 2d 30 (1959).

POINT II

THE LOWER COURTS CORRECTLY DETERMINED THAT PETITIONER HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE JUDGE DINICE IS AFFORDED ABSOLUTE JUDICIAL IMMUNITY FOR ACTIONS TAKEN AS THE MUNICIPAL COURT JUDGE OF THE CITY OF HACKENSACK.

This case presents no novel issue for review and would have no precedential value. In *Pierson v. Ray*, 386 U.S. 547, 554 (1967), this Court confirmed that the doctrine of judicial immunity protects a local judge against any claim for damages arising from actions in furtherance of his judicial office. *Id.* The immunity afforded to a judge under such circumstances is absolute. *Stump v. Sparkman*, 435 U.S. 339, 359, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); *Briscoe v. La Hue*, 460 U.S. 325 (1983); *Dennis v. Sparks*, 449 U.S. 24, 29, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1978). A judge will not be deprived of immunity on the basis that his actions were taken in error, were done maliciously, or were done in excess of his authority. *Stump*, 435 U.S. at 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331; *Pierson*, 386 U.S. at 553-59, 87 S. Ct. 1213, 18 L. Ed. 2d 288. Moreover, a

judge's absolute immunity for his judicial acts will not be impaired even if his exercise of authority is flawed by the commission of grave procedural errors. *Stump*, 435 U.S. at 359, 98 S. Ct. 1099, 55 L. Ed. 2d 331. A judge, however, will be subject to liability only in instances where his actions are taken in the "clear absence of all jurisdiction." *Id.* at 357; *see Mireles v. Waco*, 502 U.S. ___, 112 S. Ct. 288, 116 L. Ed. 2d 9, 14 (1991).

This Court acknowledged the policy behind the doctrine of judicial immunity in *Pierson* and explained that:

> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction . . . This immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection of benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. (Citations omitted). It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation. *Id.* at 553-54.

Here, plaintiff has asserted that suit was initiated in federal court because petitioner could not obtain satisfaction in state court. The Complaint goes so far as to describe petitioner's cause of action against Judge Dinice as having resulted from what petitioner perceives to be "court-house government" and having had his due process rights violated. In actuality, this case involves a dissatisfied litigant who in his pleadings, admits dissatisfaction with the state court system and the judges who decided matters against him and who now charges those same judges with malice and corruption. The Petition for Certiorari and Complaint do not contain any allegation that respondent, Dinice, acted outside his jurisdiction. Dismissal was warranted under the circumstances.

Nevertheless, in the Petition for Certiorari, Petitioner contends for the first time that the "theory of absolute immunity . . . was rendered moot by the legislative adoption of the 1947 N.J. Constitution." (Petition for Certiorari, Page 21). Petitioner's new contention on certiorari should not be reviewed because it was not presented to and decided by the Circuit Court of Appeals. *See Walters v. City of St. Louis*, 347 U.S. 231, 233, 74 S. Ct. 505, 98 L. Ed. 2d 660 (1954). The Petition for Certiorari digests New Jersey's constitutional and statutory provisions for the discipline and removal of state judges which has no relevance to the issue decided by the district court below, i.e., whether petitioner stated a claim for relief under 42 U.S.C. Sec. 1981, 1982, 1983 and/or the federal constitution.

POINT III

THE DISTRICT COURT PROPERLY IMPOSED SANCTIONS AGAINST PETITIONER FOR FILING A COMPLAINT THAT LACKS ANY LEGAL BASIS AND WAS FRIVOLOUS.

The district court properly awarded respondent Dinice sanctions, despite petitioner's status as a *pro se* litigant. Judge Lifland noted in the Memorandum and Order of September 13, 1993, that "the court holds allegations contained in *pro se* complaints 'to a less stringent standard than formal standards drafted by lawyers'" (Citation omitted). (App. 14). *Fed. R. Civ. P.* 11 provides for the imposition of sanctions for frivolous litigation and sets forth, in pertinent part:

> A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address.
>
> * * *
>
> The signature of . . . [a] party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> * * *
>
> If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or

> upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The "central purpose of Rule 11 is to deter baseless filings in district court and thus . . . streamline the administration and procedure of the federal courts." *Cooter & Gell v. Harmarx Corp.*, 496 U.S. 384, 393, 110 S. Ct. 1108, 75 L. Ed. 2d 96 (1990). Courts should impose sanctions in order to discourage wasteful and abusive tactics on the part of litigants. *See Princeton Economics Group, Inc. v. American Tel. & Tel. Co.*, 768 F. Supp. 1101, 1116 (D.N.J. 1991) (*citing Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 157 (3d Cir. 1986)).

In the instant matter, Judge Lifland considered plaintiff's *pro se* status and legal training in determining that petitioner "had the necessary tools to conduct a reasonable search as to the applicable law, which he chose not to do" and that the "slightest effort at legal research as to the viability against a sitting judge for judicial rulings would have informed [Mr.] Moretti that his claim was frivolous. . . . " (App. 12). Judge Lifland further found that petitioner "chose to burden Judge Dinice, and out of malice generated by Judge Dinice's rulings, rather than out of concern for [petitioner's] constitutional rights." (App. 13).

Since all applicable case law provides that respondent, Dinice, was immune from suit for all judicial acts

taken in his capacity as judge of the Municipal Court of the City of Hackensack, and since petitioner chose to initiate suit in spite of established law, sanctions were properly imposed. Petitioner has not contested whether the amount awarded to Judge Dinice as sanctions were reasonable. Moreover, there is nothing before this Court that would demonstrate that such sanctions were unreasonable.

CONCLUSION

Respondent respectfully submits for the reasons set forth herein that the judgment of the district court be affirmed in its entirety.

Respectfully submitted,

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